WP(C) 6880/2004
BEFORE
THE HON’BLE MR JUSTICE HRISHIKESH ROY

Heard Mr S Huda, learned counsel appearing for the petitioner. A lso heard Ms M Gogoi, learned Standing appearing for the Education Department.

2. This petition has been filed claiming a direction for appointmen t to the post of Assistant Teacher for the writ petitioner on the basis of the p etitioner having been selected for such appointment as per the Select List dated 30.3.2001 (Annexure III). It is alleged that the petitioner who had secured t he 5th position with a total of 257 marks was denied appointment whereas appoint ments were given to persons below the petitioner in the Select List and also to persons whose names did not appear in the Select List at all.

3. Mr S Huda, learned counsel appearing for the petitioner submits that by virtue of this Selection and position of petitioner in the Select List d ated 30.3.2001, he has secured the right to get appointment as a Teacher. Since such appointment has not been given to the writ petitioner whereas appointments have been given to other persons who are below the petitioner in the Select List , an appropriate direction may be issued to the respondent authorities for appoi ntment of the petitioner as Assistant Teacher in a School.

In support of the said contentions, the learned counsel for the petitioner has relied upon the decision dated 15.12.2005 in WP(C) 5509/2001, ren dered in respect of one Kailash Kalita whose name had also appeared at Serial No 12 of the Select List dated 30.3.2001. This Court while adjudicating the claim of Kailash Kalita had issued direction for his appointment and the learned couns el for the petitioner prays for a similar direction as was given in WP(C) 5509/2 001.

4. Ms M Gogoi, learned Standing Counsel on the other hand, has prod uced before this Court a notification dated 3.12.2003 issued by the Assam Govern ment whereby it has been notified that all Select Lists published prior to 1.4.2 001 had already been cancelled and there cannot naturally be any direction of ap pointment for any person whose name appears in such cancelled Select List.

It is further argued by the learned Standing counsel that the pr esent writ petition is not maintainable in as much as the writ petitioner has be latedly approached this Court seeking a direction for appointment as a Teacher a s per the selection made by the Select List dated 30.3.2001 following an adverti sement made in the year 1996 and such belated approach of the petitioner would d isentitle him from getting any relief in the present writ petition.

5. As regards the contentions made by the learned counsel for the p etitioner for seeking similar direction as was given in WP(C) 5509/2001, I am of the view that the said direction issued by the Court on 15.12.2005 cannot be ma de the basis for granting a similar direction for appointment in respect of the present writ petitioner. This departure is being made on account of the fact tha t Kailash Kalita who had filed WP(C) 5509/2001 had approached this Court without wasting any time, soon after it came to light that persons outside the Select L ist dated 30.3.2001 and persons below Kailash Kalita were being appointed by the respondent Government. In view of the said illegal appointments being given to undeserving persons, this Court by order dated 15.12.2005 directed for appointme nt of Kailash Kalita whose name had also appeared in the Select List dated 30.3. 2001.

But the present writ petition was not filed when such illegal ap

pointments were being made by the respondent authorities in the year 2001 and it was filed only on 14.9.2004, nearly 3‰ years after the Select List was prepared on 30.3.2001. Under such circumstances, I am of the view that similar direction as was given by this Court in Kailash Kalita (supra) cannot be given in the pre sent writ petition.

6. It is also seen from the notification dated 3.12.2003 that the S elect List dated 30.3.2001 which has been made the basis for seeking direction f or appointment by the writ petitioner has already been cancelled. Under such cir cumstances, it would not be appropriate for this Court to direct appointment of the writ petitioner to the post of Assistant Teacher on the basis of the Select dated 30.3.2001, which can no longer be said to be enforceable.

7. This Court must not also overlook the fact that the advertisemen t in the instant case was issued as far back as in the year 1996 and the same Se lect List was prepared as far back on 30.3.2001. Giving a direction for appointm ent for a person whose name appears in the Select List published 7 years ago wou ld mean denying of opportunities of appointments to other persons who have in th e meantime become eligible for seeking such appointment. Giving a direction for such appointment at such a belated stage, in the perception of this Court would be contrary to the requirement of providing fair and equal opportunities in matt ers of appointments to Public posts, as envisaged under Article 14 and 16 of the Constitution of India.

8. In view of the above discussions, this writ petition is held to be without any merit and the same is accordingly dismissed.

JUDGE
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